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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-268

ANNA MAE SCHOTT,
Petitioner,

vs.

CITY OF KINGMAN, an incorporated Arizona municipality,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE RESPONDENT, CITY OF KINGMAN, IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals is reported as *Schott v. City of Kingman, an incorporated Arizona municipality, et al,* 461 F(2)593.

JURISDICTION

The jurisdiction of this Court is invoked under 28 *U.S.C. Section 2101(c).*

QUESTIONS PRESENTED

1. Whether the Court of Appeals in its discretion may distinguish a decision of the highest court of Arizona where such state decision is only apparently in conflict with the decision of the Court of Appeals.

2. Whether the decision of the Court of Appeals constitutes a decision of an important State question in a way that is in conflict with applicable Arizona Law.

3. Whether the matter here at issue is an important State question within the meaning of *Supreme Court Rule 19.*

STATEMENT

The Petitioner and her late husband were land developers. From the years 1962 through 1965 they developed two subdivisions outside the city limits of Kingman, Arizona. The State of Arizona required that water must be made available before the lots in said subdivisions could be sold. At the request of the Petitioner and her husband, the City of Kingman agreed to furnish water to the said subdivisions. Petitioner and her husband laid water lines in the streets of the subdivisions and followed the minimum specifications required by the City of Kingman in accordance with the standards of the State Health Department. After the installation of said water lines, the water lines were turned over to the city of Kingman for maintenance and the City connected its water mains to the said pipes laid by the developers so that water would be available to the purchasers of lots. These water lines were not extended to individual lots. Purchasers of those lots were expected to pay the cost of attaching private lines to the water mains.

Arizona law contains the usual requirements for city and county approval of subdivisions adjacent to city limits and the recording of approved plats. *Ariz. Rev. Stat. §§ 9-474—9-479 (West 1956),* as amended by *1958 Ariz. Laws Ch. 81, § 1.* Further, it provides:

"Upon the filing of the plat or map, the fee of all streets * * * and other parcels of land reserved therein to the use of the public, shall vest in the public." *Ariz. Rev. Stat. §9-477(C).*

It was not until after the turning over to the City of Kingman for maintenance that any demand for compensation was made by the developers. Compensation was refused by the City and, as a result, this action was brought by Petitioner against the City for restitution.

Upon trial of the case the District Court found in favor of the Petitioner and gave judgment for Petitioner's out-of- pocket costs. Upon appeal by the City, the case was reversed by the United States Court of Appeals for the Ninth Circuit. Subsequently, a petition for rehearing was denied.

ARGUMENT

The Petitioner contends that this is an *Erie Railroad v. Tomkins*[1] case. It is not. The Court of Appeals merely distinguished an Arizona case which in Petitioner's opinion is in direct conflict with the decision of the Court of Appeals.

The Supreme Court of the United States should defer to the views of a court of appeals on local law as being those of an expert tribunal as to the laws of the states within its circuit. See: *Supreme Court Practice, 4th Edition,* pp. 165 and 166. It is also stated in the last mentioned work at page 166 that:

"It is of some significance that old Rule 38(5) (b) referred to a showing that the court of appeals has rendered a decision 'probably' in conflict with applicable local decisions, while the present Rule

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1 304 U.S. 78, 58 S. Ct. 822, 82 L.Ed. 1188.

19(1)(b) omits the word 'probably' in referring to conflicts with applicable state or territorial law. This may reflect the diminishing area of conflicts which will cause the Court to grant certiorari on this ground."

The Court of Appeals distinguished this case from the Arizona case which Petitioner claims is in conflict.[2] And it was recognized that there were different factual situations. Certiorari should be denied if the apparent conflict arises from mere differences in fact situations.

The Supreme Court of the United States will usually deny certiorari when review is sought of a lower court decision which turns solely upon analysis of the particular facts involved. As stated in *United States v. Johnson,* 268 U.S. 220, 45 S. Ct. 496:

"We do not grant a certiorari to review evidence and discuss specific facts."

2 The Arizona case relied upon by Petitioner is *Paar v. City of Prescott,* 59 Ariz. 512, 130 P(2) 40 (1942).

CONCLUSION

The Court of Appeals merely distinguished this case from the *Paar* case, supra; therefore, this Honorable Court should defer to the views of the lower court and deny certiorari.

Respectfully submitted,

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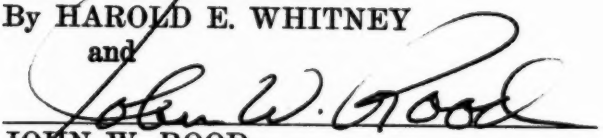

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